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July 28, 2005

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0173

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization¹ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The individual's access authorization was suspended by the Manager of a Department of Energy (DOE) local office pursuant to the provisions of Part 710. Based on the record before me, I am of the opinion that the individual's access authorization should be restored.

I. Background

The individual is an employee of a contractor at a DOE facility. On December 10, 1992, the individual signed a DOE drug certification form, stating in pertinent part, "I agree that I will not buy, sell, accept as a gift, experiment with, traffic in, use or be involved with illegal drugs I understand that if I break this agreement even once, I may lose my DOE access authorization or security clearance." DOE Exhibit 3-6. On August 3, 2002, the individual completed a Questionnaire for National Security Positions (QNSP), in which she stated that she had used marijuana and amphetamines from 1995 to 1997. The DOE local office conducted a Personnel Security Interview (PSI) with the individual on November 20, 2003. *See* DOE Exhibit 5-1. Because the security concern remained unresolved after the PSI, the DOE local office requested that the individual be interviewed by a DOE consultant psychiatrist. The psychiatrist examined the individual on December 10, 2003. *See* DOE Exhibit 2-1. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about her eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to her. Accordingly, the DOE local office suspended the individual's access authorization, and proceeded to obtain authority to initiate an administrative review proceeding.

¹Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for access authorization. The Notification Letter included a statement of that derogatory information and informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding her eligibility for access authorization. The individual requested a hearing, and the DOE local office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, the DOE consultant psychiatrist, the individual's husband, her Alcoholics Anonymous sponsor, her immediate supervisor, four of the individual's co-workers, and two of her fellow church members.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization. I have also considered the evidence that mitigates that concern. And I conclude, based on the evidence before me and for the reasons explained below, that the security concern has been sufficiently resolved.

II. Analysis

A. The Basis for the DOE's Security Concern

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual "has trafficked in, or sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to Section 202 of the Controlled Substance Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.)" *See* 10 C.F.R. § 710.8(k). The Notification Letter also asserted that the individual "has engaged in unusual conduct or is subject to circumstances which tend to show that she is not honest, reliable, or trustworthy; or which furnishes reason to believe that she may be subject to pressure, coercion, exploitation, or duress which may cause her to act contrary to the best interests of national security." *See* 10 C.F.R. § 710.8(l). These statements were based on the individual's use of illegal drugs in the period from 1995 to 1997, after signing a DOE drug certification, as well as the her failure to disclose prior drug use on an August 22, 1990 QNSP.

Several concerns are raised by evidence that an individual has engaged in trafficking, selling, transferring, possessing, using or experimenting with illegal substances. First, any involvement with illegal drugs demonstrates a disregard for the law. In addition, an individual who uses illegal drugs opens herself to blackmail or other forms of coercion, because she may want to conceal her usage. Moreover, even if the individual is only an occasional user, while the individual is under the influence

of drugs, her judgment may be impaired and she may be more susceptible to pressure, coercion, or exploitation. The use of illegal drugs after signing a DOE drug certification raises additional concerns as to the future reliability of an individual, given that the individual has in the past violated a commitment to the DOE. Finally, the failure to disclose prior use of illegal drug use raises questions as to the individual's honesty in her dealings with the DOE.

The individual does not dispute the basic facts set forth above, nor that those facts create a substantial doubt regarding her eligibility for access authorization. Because I find that the undisputed facts in this case create a substantial doubt regarding the individual's eligibility for access authorization, the remainder of this decision will focus on whether the security concerns at issue have been resolved.

B. Whether the Security Concerns Have Been Resolved

A hearing under Part 710 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," i.e., "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3),(6). Under the Part 710 regulations, the Hearing Officer is directed to make a predictive assessment as to whether restoring access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

"In resolving a question concerning an individual's eligibility for access authorization," I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c). The discussion below reflects my application of these factors to the evidence presented in this case.

1. Failure to Disclose Drug Use on 1990 QNSP

On a QNSP signed on August 22, 1990, the individual answered "No" to the following question: "Do you now use or supply, or within the **last 5 years** have you used or supplied, marijuana, cocaine, narcotics, hallucinogenics, or other dangerous or illegal drugs?" DOE Exhibit 3-5 (emphasis in original). However, in a January 30, 1992 PSI, the individual stated that her last use of marijuana "was in 1986 or early 1987." DOE Exhibit 1-5 (Case Summary Sheet).² When asked at the PSI why she did

² The exhibits submitted by DOE did not include a transcript of the January 30, 1992 PSI.

not report her marijuana use on the 1990 QNSP, she stated that “she was not thinking and was guessing the time she last used it.” *Id.*

While the failure to disclose her marijuana use as late as 1987 on the 1990 QNSP certainly raises security concerns, I find that those concerns are sufficiently resolved for several reasons. First, as to the recency of the conduct, nearly 15 years have elapsed since the individual completed the QNSP in question. Second, it appears that the individual freely admitted in her January 1992 PSI that her last use of marijuana may have been as late as 1987, indicating that her failure to disclose this on the 1990 QNSP was not intentional. Finally, the individual has since demonstrated her honesty by admitting to drug use from 1995 to 1997 when she completed an August 3, 2002 QNSP, and by voluntarily doing so triggering the present proceeding.

2. Use of Illegal Drugs from 1995 to 1997 After Signing a 1992 Drug Certification

Looking toward the future, there are two primary concerns raised by the individual's use of illegal drugs from 1995 to 1997. The first is that the individual may again use illegal drugs. As noted above, the use of drugs can impair a clearance holder's judgment, and a person wanting to conceal the use of illegal drugs is susceptible to blackmail or other forms of coercion. Second, whether or not she uses illegal drugs, there is a concern that the individual cannot be counted on in the future to follow the rules governing the handling of classified information or special nuclear material, given that she broke the law in the past by using illegal drugs, as well as violated the commitment made to DOE when she signed a drug certification in 1992. However, I find that the individual has presented evidence that sufficiently mitigates both of these concerns.

In my opinion, the probability that the individual will use illegal drugs in the future is very low. By her own account, the individual has abstained from the use of alcohol and illegal drugs since May of 1997, over eight years ago. Transcript of Personnel Security Hearing (“Tr.”) at 20. She presented the testimony of many witnesses, including her husband and her Alcoholics Anonymous (AA) sponsor, all of whom attest to her sobriety. Tr. at 25, 29, 33, 41, 47, 51, 53, 56, 58. Not only has the individual “worked the steps” of both AA and Narcotics Anonymous (NA), she has five “sponsees,” two in NA and three in AA, thereby demonstrating a commitment to others' recovery as well as her own. Tr. at 41, 65.

Moreover, the DOE psychiatrist who examined the individual in December 2003 described the individual's prognosis at the time of the examination to be “very good.” Tr. at 20. He noted in her testimony that her sobriety had been tested by two “crisis situations.”

A. The first one was in April of 2001 when she found out that her son was molesting her daughter. And then the second issue was when her stepdaughter passed away from an overdose, drug overdose.

Q. And that was significant in your mind in what ways, that she didn't go back to using drugs and alcohol?

A. Those were major stressors in her life, and she became depressed, understandably. The depression even developed into a clinical depression. And she coped with it with assistance from psychiatric and psychological providers, but she did not resort to using drugs or alcohol.

Tr. at 15, 16-17. After having heard all of the testimony at the hearing, the DOE psychiatrist testified that his favorable opinion was “reinforced” by the evidence presented. Tr. at 73. I agree with his opinion, and find that there is little chance that the individual will return to the use of illegal drugs or alcohol.

Furthermore, I have no doubt that the individual can be trusted to follow DOE security regulations in the future, despite her past use of illegal drugs and her violation of the commitment in her 1992 drug certification. First, I see no evidence in the present case that the individual’s disregard for drug laws was indicative of a pattern in the individual’s life of disregard for other laws, for the law in general, or in particular for any laws relating to national security. Second, the concern raised by the individual’s violation of the law and of her commitment to DOE is mitigated by time, in that the behavior in question ceased over eight years ago. Third, the individual’s husband, friends, and co-workers who testified at the hearing all agree that the individual is honest, reliable, and trustworthy. Tr. at 25-26, 30, 35, 36, 38, 42, 48, 51, 54, 57, 59, 66. This testimony is bolstered by the fact that the individual’s drug use in 1995 to 1997 came to light because the individual volunteered the information on her 2002 QNSP.

Most importantly, while in cases such as these it is not uncommon to hear individuals profess that they have changed, this is a case where I am confident that the individual is genuinely a changed person. It is worth noting here that when the individual began to use illegal drugs again in 1995, violating the law and her commitment to DOE, she was already actively abusing and dependent on a legal drug, alcohol. *See* DOE Exhibit 2-1 (opinion of DOE psychiatrist that the individual “has a history of polysubstance abuse, and with probably dependence on alcohol and marijuana). As the individual describes it,

I first stopped using drugs when I had got pregnant with my son, and I stopped for that reason. And I never really knew I was an addict, I just thought that I used drugs a lot. And then when I stopped, I didn't have any tools, I didn't have any support system, I just stopped using. And so what happened was, I started drinking alcohol and doing -- what I was doing was just replacing the drugs with alcohol. I didn't know it at the time. And so when I signed the drug certification, I said I would never use again, I honestly thought I would never use again. But when my life got hard, since I didn't have any tools, I did use again.

Tr. at 63. The individual has abstained from the use of illegal drugs and alcohol since May 5, 1997, over eight years ago. All of the concerns raised in this case relate to behavior by the individual prior to that date. Since that date, the individual has demonstrated her commitment to her sobriety through two personal crises, the trauma from which could lead to substance abuse even in individuals with no prior history of abuse and dependence. She has also affirmed her honesty and adherence to DOE rules and regulations since that time by reporting her drug use on her 2002 QNSP, the disclosure that put her clearance in jeopardy and led to the present proceeding.³ Because she has been tested and has proven herself, I am convinced that, in the future, the individual will present a lower security risk than a clearance holder with a spotless record.

III. Conclusion

Upon consideration of the record in this case, I find that there is evidence that raises a substantial doubt regarding the individual's eligibility for a security clearance. However, the concern raised by that evidence has been sufficiently mitigated by the individual's sustained and successful efforts at recovery from her substance abuse problems, as well as her pattern of honest and reliable behavior during her over eight years of sobriety. For the above-stated reasons, "after consideration of all the relevant information, favorable and unfavorable," I conclude that restoring the individual's "access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. §§ 710.7(a), 710.27(a).

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: July 28, 2005

³ The individual was under no obligation to report her drug use to DOE security prior to filling out the 2002 QNSP. See Tr. at 39. At the same time, it seems clear that she made no effort to hide her prior substance abuse from her employer. Tr. At 68. As her supervisor at the time her clearance was suspended testified,

[S]he shared with me that when she had been hired on . . . she had signed a statement stating that she would not use drugs, and that subsequent to that, she did begin using drugs again, and entered the Employee Assistance Program. And she felt that because she did go through a [DOE contractor]-sponsored program, that she had disclosed that properly, and didn't feel that there was an issue. She was quite surprised that this was the reason her security clearance was pulled.

Tr. at 37.